

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ES IT SOLUTIONS LLC d/b/a ZAELAB,

Plaintiff,

-against-

19-cv-4986

THE DENTISTS SUPPLY COMPANY,

Defendant.

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Plaintiff ES IT Solutions LLC d/b/a Zaelab (Plaintiff or “Zaelab”), by and through its counsel, Solomon & Cramer LLP, for its Complaint against defendant The Dentists Supply Company (Defendant or “TDSC”), alleges as follows:

INTRODUCTION

1. This is an action for damages based on TDSC’s failure to pay Zaelab for services rendered pursuant to a Professional Services Agreement. TDSC owes but has failed to pay Zaelab \$171,881.01.

JURISDICTION AND VENUE

2. This Court has diversity subject matter jurisdiction under 28 U.S.C. § 1332. Plaintiff is a New York limited liability company consisting of a single member, who is a citizen of Connecticut. Defendant is a citizen of California because it is a California corporation with its principal place of business in California. The matter in controversy exceeds, exclusive of interests and costs, the sum of seventy-five thousand dollars.

3. This Court has personal jurisdiction over Defendant because it agreed, by written contract, to submit to the exclusive jurisdiction of the state and federal courts located in New York.

4. Venue is proper because Defendant consented to personal jurisdiction to all federal and state courts located in New York.

PARTIES

5. Zaelab is a digital advisory and solutions company, helping businesses implement, innovate, and manage their interactions with commercial and retail customers. Its principal place of business is at 61 Wilton Road, Westport, CT 06880.

6. On information and belief, TDSC sells dental supplies through its online platform. Its principal place of business is at 1201 K Street, 14th Floor, Sacramento, CA 95814.

FACTUAL BACKGROUND

7. TDSC retained Zaelab pursuant to a September 14, 2016 Professional Services Agreement (the “Agreement”) to provide digital advisory services, as described in one or more Statements of Work (“SOWs”). In consideration for the services to be rendered, TDSC agreed to pay Zaelab the fees specified in the SOWs plus expenses. In essence, the Agreement is a “time and materials” contract.

8. The purpose of the Agreement was for Zaelab to host and support a cloud-based infrastructure on Amazon Web Services for TDSC, including testing, developing, and implementing related applications and platforms.

9. Following the September 14, 2016 effective date of the Agreement, Zaelab provided services pursuant to the Agreement and various SOWs. Zaelab met all of its contractual requirements, and TDSC accepted the services without objection.

10. On February 6, 2019, TDSC issued a 30-day notice of termination (for convenience; not for cause) pursuant to Sections 3.2.2 and 3.2.4 of the Agreement. The effective date of termination was, therefore, March 9, 2019.

11. Based on services rendered by Zaelab pursuant to the SOWs, Zaelab submitted the following invoices to TDSC:

| Date | Project | Invoice No. | Delivery Period | Invoice Amount |
|-----------|------------------------|-------------|------------------------|---------------------|
| 1/31/2019 | Continuous Delivery V2 | CCV2-1737 | Jan-19 | \$292,134.50 |
| 2/28/2019 | Continuous Delivery V2 | CDV2-1749 | Feb-19 | \$151,966.75 |
| 3/31/2019 | Continuous Delivery V2 | CDV2-1753 | Mar-19 | \$17,095.25 |
| 2/28/2019 | Managed Services | 1740 | Feb-19 | \$49,248.55 |
| 3/7/2019 | Managed Services | 1752 | March 1-9, 2019 | \$10,632.44 |
| 2/13/2019 | Managed Services | 1738 | Monthly Hours Rollover | \$136,603.21 |
| | | | Total | \$657,680.70 |

12. After purporting to review the invoices, on April 8, 2019, TDSC paid Zaelab \$485,799.69, but withheld payment under certain invoices, on the ground that Zaelab supposedly failed “to provide adequate proof and documentation for the purported hours work.”

13. TDSC’s objections were spurious and illegitimate. Zaelab, in fact, had provided detailed time records and invoices to TDSC supporting the various charges.

14. TDSC’s failure to pay \$171,881.01 of the full amount due constituted a breach of Agreement.

FIRST CAUSE OF ACTION BREACH OF CONTRACT

15. The Agreement constitutes a valid and enforceable contract between Zaelab and TDSC.

16. Zaelab performed its duties under the Agreement.

17. TDSC breached its duties under the Agreement, by refusing to pay Zaelab for the services performed.

18. Zaelab has been damaged as a result of TDSC’s breach in the amount of \$171,881.01.

DEMAND FOR RELIEF

WHEREFORE, Zaelab demands the Court enter judgment as follows:

- A. Compensatory damages in the amount of \$171,881.01;
- B. Prejudgment interest at the statutory rate of 9% per annum from April 8, 2019 to the date judgment is entered;
- C. All costs and disbursements incurred in prosecuting this Complaint; and
- D. Such other and further relief as this Court deems just and proper.

Dated: New York, New York

May 24, 2019

Respectfully submitted,

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